

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3617 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VINOD K DALAL

Versus

SECRETARY GUJARAT LEGISLATURE

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Appearance:

MR AK CLERK for Petitioner

MR DA BAMBHANIA Addl. GP for the respondents.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/11/96

ORAL JUDGEMENT

The petitioner herein is the Under-Secretary who is aggrieved on account of promotion of respondent NO.2 as Deputy Secretary in supersession of the petitioner. The petitioner who was initially appointed as Junior Assistant under respondent No.1 in the month of September, 1961 was gradually promoted to the post of Superintendent and then Under Secretary, Gujarat

Legislative Assembly. After this promotion as Under Secretary, Gujarat Legislative Assembly in the month of July, 1982, under communication dated 3rd January, 1986. he was communicated the confidential reports for the period from 1st April, 1984 to 30th September, 1984 . Under the said communication, the petitioner has been reported as an Officer of "Fair" calibre. Against the aforesaid communication, the petitioner made a representation to the Speaker of the Legislative Assembly in the month of February, 1986. under communication dated 27th July, 1987, the petitioner was, once again, communicated his "Fair" Grading for the period from 1st April, 1985 to 31st March, 1986 and from the 1st April, 1986 to 31st August, 1986. Against the said communication also, the petitioner made a representation to the Speaker of the Legislative Assembly. The petitioner's representations appears to have been accepted by the Speaker and under the communication dated 1st February, 1986, the petitioner was informed that the "Fair" Grading reported in his confidential record shall not be treated as "adverse" but was communicated to the petitioner with a view to affording him an opportunity to improve. It was further communicated remark that against the Column - 14, where the petitioner's performance was graded as "very poor", was expunged and was substituted by "fair". After the above referred communication dated 3rd February, 1988, respondent NO. 2 was promoted as Deputy Secretary in the State Legislative Assembly on 7th July, 1988. Feeling aggrieved, the petitioner has preferred this petition. Learned advocate Mr. Clerk appearing for the petitioner has informed this Court that pending this petition, the petitioner was promoted as Deputy Secretary on 11th April, 1996 and that he has retired from service on 31st August, 1996.

3. Several contentions have been raised in the petition regarding criterion for promotion being that of seniority cum merits as well as certain allegations have been made against one Shri Kathiriya who according to the petitioner had written petitioner's confidential service record. It is alleged that said Shri Kathiriya having been junior to the petitioner in the lower cadre of section officer, he bore grudge against the petitioner and looked down upon the petitioner and used to ridicule the petitioner. It may be noted that the said Shri Kathiriya has not been impleaded as respondent to this petition and it is also denied in the counter affidavit that said Shri Kathiriya had written confidential reports of the petitioner as alleged.

4. The respondents have contested the petitioner's claim by filing its counter affidavit. It has been averred that under Notification dated 7th October, 1974, rules and the orders applicable to the members of the Secretariat in the corresponding grades are made applicable to the staff of the Legislative Assembly also. In view of the said notification dated 7th October, 1974, in absence of any specific provisions in the Gujarat State Legislative Assembly Secretariat Staff (Recruitment and Conditions of Service) Rules, 1974, the provisions made for appointment of Deputy Secretaries in the Secretariate shall be applicable to the Deputy Secretaries in the State Legislative Assembly also. The Rules governing promotion to the post of Deputy Secretary to the Government has been reproduced at page 57. In view of the said provisions, it is required to hold that the promotion to the post of Deputy Secretary is made from amongst the Under Secretary strictly on consideration of efficiency and of proved merit. In that view of the merit, the petitioner's contention that the promotions to the post of Dy. Secretary is required to be made on the basis of seniority cum fitness requires to be rejected and is rejected. The petitioner's allegation of mala fide against Shri Kathiriya requires to be rejected first because said Shri Kathiriya is not impleaded as party respondent in this petition and it has been specifically denied that said Shri Kathiriya has written the confidential reports of the petitioner as alleged.

4. Learned advocate Mr. Clerk has relied upon the guidelines issued by the Legislature under its Circular dated 17th May, 1975 and has submitted that the confidential reports of the petitioner are not maintained in accordance with the above referred guidelines. He has also submitted that specific remarks are required to be incorporated against each and every column in the confidential reports of the person concerned, however, in the case of the petitioner, no such specific remarks have been made and general grading of "fair" has been entered against various columns as is communicated to the petitioner. He has further submitted that no sooner the petitioner received the above referred communication, then he made representation to the Speaker of the Gujarat Legislative Assembly against the said entries. Mr. Clerk has submitted that the representation made by the petitioner as far back as in the month of February, 1986 has not been decided and the respondents have erroneously relied upon the adverse entries without first considering the representation made by the petitioner. The respondents in its counter affidavit have stated that the

representation was not placed on records and, therefore, it is not decided. Further, it is submitted that the guidelines issued at annexure "C" are merely directory and not mandatory. Mr. Clerk has also referred to a similar communication received by the petitioner for the period commencing from 1st April, 1985 to 31st March, 1987. Upon his representation, under the communication dated 3rd February, 1988, the petitioner was informed that the "Fair" grading recorded in his service record shall not be treated as adverse. Mr. Clerk has emphasized that this decision taken by the Honourable Speaker upon the petitioner's representation was not placed before the respondents and the same has not been taken into consideration while examining the case of the petitioner for promotion. In support of his claim, Mr. Clerk has relied upon the judgment of this Court in the matter of Dr BR Kulkarni v.State of Gujarat, 19 GLR 1021.

He has submitted that the respondents have resorted to precisely the same practice which has been depreciated by the Court in its above referred judgment in the matter of Dr. Kulkarni (supra). Mr. Clerk has also relied upon the judgment of the Hon'ble Supreme Court in the matter of Gurudayal Fizzi v. State of Punjab and others, [ 1979 SC 1622 ]. In paragraph 17 of the above referred judgment, it has been held that, "adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or explain the circumstances leading to the report. "

Mr.Clerk has also relied upon the judgment of the Hon'ble Supreme Court in the matter of State Bank of India vs. Kashinath Kher and others,[AIR 1986 SC 1328]. The Court considering the facts before it, has held that the confidential reports and the character roll of the person concerned should be written by the superior officers higher above the cadres. The officer who shall objectively, impartially and fair assessment without any prejudice whatsoever with highest sense of responsibility alone to inculcate the devotion to duty, honesty and integrity to improve excellence of the individual officer. It is further held that the committee considering the promotion has to independently assess the merit and ability of each candidate from the reports and records consistent with weightage prescribed in the rules and then to determine the relative merit and ability of the officers and then to arrange the order of merit of the officers for promotion. Mr. Clerk has submitted

that this is precisely what was required to be done by the respondents while considering the case of the petitioner for promotion and has failed to do so by referring to the "Fair" grading made in the confidential reports of the petitioner. Mr. Clerk has also relied upon another judgment of the Hon'ble Supreme Court in the matter of Sukhdev vs. Commissioner, Amravati Division and another, [ JT 1996 (5) SC 477]. It has been held by the Supreme Court that, "when an officer makes remarks he must eschew of making vague remarks causing jeopardy to service of the subordinate officer".

Though the respondents have stated that the petitioner's representation against adverse entries made for the period from 1st April, 1984 to 30th September, 1984 was not considered because the same was not found in the records, the respondents, however, have not denied that the representation of the petitioner was received by them. Thus, it is apparent that the respondents have relied upon the confidential reports of the petitioner against which representation was made by the petitioner and the same was yet not decided. The petitioner's allegation that the confidential report was not updated and the communication dated 3rd February 1988 was not considered while considering the case of the petitioner for promotion has not been denied. It is true that there are no specific adverse entries made in the confidential reports of the petitioner for the period from 1st April, 1984 to 30th September, 1984 except that the petitioner has been given "Fair" grading. In para 3 of the said communication, it has been mentioned that the said entry was communicated to the petitioner for information and to enable him to improve his performance. However, at the same time, explanation has also been sought for and, therefore, it would be safe to believe that the said grading has been treated as adverse and has been taken into consideration as such.

It would, therefore, be just and expedient to direct the respondents to reconsider the petitioner's case for promotion to the post of Dy. Secretary as on the date on which it was earlier considered before 7th July, 1988 and the petitioner was considered unfit for promotion.

It is, therefore, directed that the "Fair" grading recorded in the petitioner's confidential reports for the period from 1st April, 1984 to 30th September, 1984 shall not be taken into consideration as adverse entries. It may be treated as an intimation to the petitioner to enable him to improve his performance. The

communication dated 3rd February, 1988 Annexure "H" to the petition shall also be taken into consideration while re-examining the case of the petitioner for such promotion. In the event after reconsidering the petitioner's case for promotion as aforesaid, the petitioner is found fit for promotion, he shall be given deemed date of promotion to the post of Deputy Secretary as of 7th July, 1988. In that case, the petitioner shall also be entitled to revision of his pay with effect from 7th July, 1988 and shall be entitled to the difference of salary from the date of his actual promotion as Deputy Secretary that is from 11th April, 1996. The aforesaid exercise of reconsideration of the petitioner's case for promotion shall be completed within a period of six months from the date of receipt of writ of this Court.

The petition is allowed to the aforesaid extent.  
Rule is made absolute accordingly. There shall be no order as to costs.

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